



## Nederland Planning Commission

### MINUTES

Wednesday, June 26, 2013 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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#### 1) Call to Order

Chairman Larsen called the meeting to order at 7:05 p.m.

#### 2) Roll Call

Present: Chairman Larsen, Vice-Chairman Roger Cornell and Commissioners Mikki Osterloo, Steve Williams, Betty Porter and Trustee Liaison Kevin Mueller

Also present: Town Administrator Alisha Reis, Deputy Town Clerk Cynthia Bakke, Mayor Joe Gierlach, DDA Chairman Ron Mitchell, Comp Plan Steering Committee member Paul Turnburke.

Absent: Commissioner Lisa Mayhew.

#### 3) Approval of minutes from May 22, 2013

A Motion to approve the Minutes as written was made by Commissioner Cornell, seconded by Commissioner Osterloo, 3 in Favor, with Commissioners Porter and Williams, and Trustee Mueller abstaining from the vote.

Chairman Larsen welcomed Commissioner Porter and welcomed back Commissioners Osterloo and Williams to the Planning Commission.

#### 4) Public Comment

Chairman Larsen noted that the public hearing for a minor subdivision at the Wastewater Treatment Plant has been canceled, with appropriate advance noticing to this effect, just in case anyone has come to hear discussion on this item. It has been temporarily tabled, but will come before the Commission in the next months.

Ron Mitchell, of Nederland, spoke about his impending large development proposal to be brought before the Planning Commission within the year. He has included three separate public Open-House events to inform and receive public input. Mitchell acknowledged that his project may be considered controversial, thus, he desires to

conclude the process by allowing a town vote, though is unsure how this can be attained. He felt that this would allow far more public input regarding large or controversial projects, as well as hopefully reducing threats, as experienced by previous elected officials.

## 5) Information Items

## 6) Action Items

1. Determination of Use NMC Section 16-32(b), pertaining to Use Groups, allowing application for Consideration of Use.  
Larsen delineated the hearing process, wherein the applicant's testimony will be heard on her behalf, alternating with response from Town/Zoning Administrator Reis. Public comment will follow, allowing three minutes to those who have signed up to speak.

Cheryl Fanelli, 184 W. Highway 72, Nederland, noted that she is a 25-year resident; and owner of Nikki's Nook. She has proposed a private, cannabis café, intended as a safe, well-lit space for members to bring their own marijuana to consume. She stated she will not be providing marijuana, however, she would like to offer fresh/packageged snacks, coffee and tea to members using the space.

Fanelli said former Town Clerk Teresa Myers approved Fanelli's initial business license under enclosed retail for a cannabis club in February 2013. Reis said that in fact, the license was not issued, nor had it not gone through proper zoning review and approval. Fanelli expressed her opinion that Town Clerk Michele Martin determined zoning code differently than Myers, stating that Martin refused to issue the license based on Section 16-32(b), which states, "Any use that is not specifically permitted in this Section shall be deemed to be a prohibited use. If a question arises as to whether a specific use does or does not fall within the expressed use categories, application may be made to the Planning Commission for a determination as to whether a specific use is permitted. Any decision by the Planning Commission may be reviewed by the Board of Trustees within thirty (30) days of the decision of the Planning Commission." Fanelli proceeded to give background on her experience. She said that her business fits under the use category of 'enclosed retail'. She conveyed her belief that personal opinions are part of the zoning review process, and that the Town Clerk is interpreting the Code. She expressed her feeling that town residents support the establishment of her business idea, which could create jobs and revenue for the town. She noted there are 45 'unprotected businesses' which fall under the 'enclosed retail'

category and suggested removing the first sentence of Section 16-32(b). Fanelli thanked the Planning Commission for hearing her, as well as those who have come in support.

Reis provided counter-testimony. She said the issue appears to be centered upon a misunderstanding of the business license process. The process for any business license is to first verify zoning district and allowable uses according to the Use Group chart, prior to licensing and inspection. The initial application was indicated for a private club allowing commercial use. The term "club" is defined under Section 16-6 Definitions, but is not mentioned further in the Use Groups chart. Reis sought to accommodate the requested use within another close-use category, however social clubs are specifically not allowed. Reis informed Fanelli of this via email correspondence, dated April 22, 2013. At this time, Reis also suggested that Fanelli contact the Mayor's Task Force on Retail Marijuana to potentially request inclusion of her concept in their recommendations, as they are crafting guidelines for the implementation of State Constitutional Amendment 64.

Reis further testified that when the original business license was denied as not fitting within an established Use Group category, a second application was submitted in April for a café, providing fresh and packaged snacks. Reis gave conditional approval of the second license, clarifying that she understood it would not involve cannabis, and would comply with Building and Fire Department inspection requirements. A cannabis café is not currently a legal use under Nederland Town Code, Reis said. She said further that the four current medical marijuana businesses operating in Nederland were licensed in compliance with State Law and Nederland Ordinance 690. Even at these medicinal operations, on-site usage is not allowable under State Law.

There are allowances for private consumption in a home environment, however, a business license implies that it is open to public use. Reis provided Fanelli information in order to seek a zoning designation determination from the Planning Commission. End of testimony.

Discussion among Commission members ensued. Mueller inquired whether a social club is not allowed by code. While it is defined in the zoning code, social clubs/dance clubs are not shown as allowable uses in the Use Chart. A change would require approval from the

both the Planning Commission, followed by the Board of Trustees. Reis stated as Zoning Administrator that currently this use is “silent” as an allowable use. Larsen said he expected to see specific language against clubs. This was a determination from Reis, who said her philosophy in zoning review is generally to look for an opportunity to align with a permitted allowance, whenever possible.

Porter noted that Federal and State law regarding smoking indoors could be a barrier to allowing the proposed cannabis café. Fanelli retained an attorney; who has advised her that exceptions to the law are made for members only in a private club, allowing indoor consumption. She stated this is her reasoning for a private, not public, establishment.

Public comment was made by John Brocklehurst, 1120 Eldorado Ave., Eldora, who spoke on behalf of using medicinal marijuana to treat hip cancer, a knee replacement and for pain and stress-management. He said he is strongly in favor of Fanelli’s proposed business.

Nicole Fannelli, 184 W. Highway 72, Nederland, also spoke in favor of the proposed business. She said she is a 25-year resident; who was suddenly diagnosed with nerve disease, causing her to become a paraplegic. She stated that medicinal marijuana use has allowed her to go from incomprehension to cognitive understanding, as well as re-learning how to walk. She advocated for the allowable use of medicinal marijuana in a safe environment, such as what this business proposes.

Commission members continued to discuss. Cornell sees this as a complex issue, requiring more analysis. He said, as he sees it, the proposed business is a private club for commercial use. He said the Planning Commission is in the right to affirm the Zoning Administrator’s zoning determination. As there is no historical precedence for this type of club/café, the use charts must be reviewed, as well as State guidelines about marijuana being enforced the same as cigarettes. He noted it is still against the law to smoke in public places, though would like to see a compromise, as has been established for cigar and hookah bars allowing indoor consumption, but would require changes within the Code.

The proposed location is next door to Nikki’s Nook antique shop, with a private entrance for the café. Colorado Department of

Revenue will be issuing new state policies as of July 1, 2013. Fanelli stated that this will only address tax issues, not uses, though this was not confirmed. Cornell suggested that it isn't hard to add an existing use group, inquiring if this would be done as a Special Review Use permit application. The Planning Commission is already reviewing the zoning chapter of the Code, but will require review and compliance with State guidelines.

Williams mentioned that he sees medical marijuana and social, recreational marijuana establishments as different issues, despite testimony given on behalf of the benefits from medicinal marijuana usage. Fanelli agreed that these are different uses, and that she is not proposing a medicinal marijuana establishment. She again asserted that she would not provide marijuana for sale, members must bring their own. Porter clarified that the second business application was for a snack food café, so the issue remains that a private club is currently not allowable, nor on-site consumption of cannabis as a concept. Osterloo agreed with Cornell, in favor of reviewing code and implementing changes. She said she doesn't agree with compelling Fanelli's business to operate as a food café, but that it does sound like social club.

Larsen enumerated the options before the Planning Commission:

- 1) Approve a zoning designation to allow for a cannabis café,
- 2) Decline to designate the cannabis café concept as an allowable use or 3) Choose to seek further input over next 30 days to make ruling after hearing testimony and conducting more analysis. He noted the Commission can seek further input from the Town Attorney, forthcoming State guidelines, as well as the Mayor's Task Force on Marijuana. The Planning Commission will be undertaking the lengthy process of reviewing Use Group tables, dovetailing with the Comprehensive Master Plan update approval.

Reis reminded the Commission that private adult use of marijuana is currently legal in Colorado, however an application is required of a commercial operation. Fanelli reported that her business is for-profit, however it is proposed as a private members-only establishment to allow for consumption. She said she has worked with everyone at the Town-level to see this realized since February 2013.

Cornell moved to affirm Zoning Administrator Reis's zoning determination, and added to recommend to the Board of Trustees to modify the Use Group tables to include clubs. Reis replied that the Board of Trustees will request review and recommendation of the Planning Commission. Porter seconded, but no vote was taken.

Mueller queried why this is not allowed at present. Cornell said he feels there needs to be more discussion, and suggested that this issue can be put before the Board of Trustees. Mueller asserted that the Board of Trustees would prefer more thorough analysis from the Planning Commission, with a recommendation for the Trustees, to expedite processes. He mentioned that Fanelli had gone through the application process, and was mostly approved. The applicant felt like it was being processed, but wasn't finalized. Reis reported that Fanelli's application was never reviewed by her as Zoning Administrator until after Myers left her position as Town Clerk.

Despite feeling things have improved at the Town staff level from previous administrations, Mueller spoke in support of helping those who feel there is inequity among Town staff, noting that this is why some people got involved at the Board level. He said he wants to ensure Nederland doesn't repeat the mistakes of other communities. He'd said he'd also like to encourage that it is good policy to work with town businesses, feeling this was not the attitude of previous administrations. He said his recommendation would be to allow Fanelli's proposed business to move forward as private club.

Cornell concurred, however he suggested adding clubs as a commercial use group, instead of 'enclosed retail'. Larsen suggested it is added as a separate line item instead of a commercial-use group, so as not to set precedent. He would like to take more time to review. Town Attorney Carmen Beery issued a memo, which highlighted pertinent conditions of Amendment 64, which does not authorize the consumption of marijuana "openly and publicly" noting that this distinction applies even to one's own personal use. The recently adopted state legislation to implement Amendment 64 also amended the Colorado Clean Indoor Air Act to specifically include marijuana. This bans smoking of marijuana in all "indoor areas", consistent with prohibition against indoor tobacco consumption.

The motion and second remained on the floor, but were withdrawn after the decision amongst Commission members to prolong determination. Cornell made another motion to affirm Reis's zoning determination and put on the Planning Commission's Agenda for the July meeting to make recommendation to the Board of Trustees related to clubs as allowable uses, seconded by Porter, 5 in favor, with Mueller abstaining.

Fanelli said she felt she has done due diligence, and asked that her business be approved tonight under Sec. 16-32(b). Mueller responded that the only thing being denied is a private club until this determination is made, in the following month.

The Planning Commission will discuss further to make a determination of where in the use group chart it would be proper to add social clubs, and then recommend this change to the Board of Trustees. The Mayor's Task Force on Recreation Marijuana will have submitted recommendations to come before the Planning Commission at the July meeting as well. It was inquired if someone from the Task Force will be present to make a presentation. In the meantime, these recommendations will be reviewed by Reis and Beery. Osterloo thanked Fanelli for all the work she has undergone on behalf of her business proposal. Williams asked for patience as this is further analyzed. Fanelli stated her feeling that the delay equals lost revenue.

## **7) Discussion Items**

Incorporation of Public Review Comments into the Comprehensive Plan update.

There was a plethora of public comment submitted, though it was mentioned that some of the submissions were hard to download. Cornell noted that several submissions were very detailed in their analysis, nearly equal in size to the Comprehensive Plan itself.

Steering Committee member Turnburke queried about their general impression of the Comprehensive Plan as it sits right now. Turnburke said that State Law mandates sections must specifically address recreation and tourism, but that there are gaps, most notably regarding the incorporation of the Parks and Recreation Master Update. He said he feels that language about tourism is minimal and questionable. The discussion continued, centered around tourism being a potentially divisive issue. Larsen inquired about how

extensive or minor sections on recreation and tourism need to be. Reis informed that guidance is lacking, therefore it could conceivably be as simple as a one-line declaration stating they are not considered a big deal. The inclusion of these sections was emphasized several years ago when Colorado realized the prominent allure of tourism to the state. Statutes governing the Master Plan require mention.

Turnburke said he thinks it is important as the Steering Committee, to hear public comments, not just insert personal views from committee members. Cornell pointed out comments about tourism not being sustainable, and said Colorado is synonymous with outdoor recreation. He noted that approximately 1 million visitors travel through the roundabout annually. Every business receives this revenue, which enables Nederland residents to sustain in the mountains, he said. He expressed his feeling that the diversity which tourism brings can be celebrated, as well as supplementing the essential businesses that residents rely upon. Mueller spoke about looking at the tourism issue as to what are sustainable businesses for Nederland. He said that tourism can be more cognizant of natural systems and not dependent upon current modes of transportation. Ideally, there wouldn't be businesses in town that are dependent upon tourism, as that is not a sustainable model, Mueller said. He asked, how do we plan for the future to be more sustainable for the community? Larsen responded that, "tourism is not sustainable" is not an agreed-upon statement among the group. More discussion ensued regarding tourism, future planning, and how to implement changes despite the current societal patterns. Mueller said it is important to generate ideas about ways to make tourism a more sustainable idea. Cornell doesn't foresee a drastic change in society, noting there will be no less traffic coming into Town. Mueller countered that this will be the case, especially if nothing is done now to address it. He expressed his feeling that control can be established through conscious planning.

Larsen reminded members that the question before them is if tourism has enough discussion in the plan as it stands now. Turnburke mentioned the conflict, in that cars are used to bring people here to buy disposable items and stay in hotels. Larsen said it speaks to the way things are. Mueller questioned Commission members if naming Nederland as a gateway to the Indian Peaks Wilderness is appropriate. He spoke about considering the carrying capacity of each place, which can only accommodate so many people. He said that it must be understood what the watershed can handle. Larsen replied that this is a global problem. To address issues at the community level is addressing on a global level, Mueller said.



Cornell said he felt that we have to address needs as they are now. Do we need more or less hotels, not just solely focusing on sustainability issues, he said. Mueller asked if we are ready to acknowledge that there are limits. William inquired how this can be controlled. Cornell said he doesn't think this is under Planning and Zoning purview. Mueller remarked that the U.S. Government offers grant money for sustainable projects. Porter said that the document discusses sustainability at length, but the next step is how to implement.

Larsen queried how the public comments can be most easily incorporated, chiefly, some of the heftier submissions. Reis suggested that all comments be separated into actionable items vs. philosophical observations, as well as asking for volunteers to assist with the process. After considerable discussion, it was decided to hold another Steering Committee work session with members continuing to focus on the element for which they served as ambassadors. The work session to incorporate public comments will be held on Wednesday, August 7, at 6pm.

Larsen reflected upon topics for the next meeting. He asked what other towns have done to address changes in their use group tables. The Planning Commission will also review the recommendations of the Mayor's Task Force on Recreational Marijuana, which will be vetted through legal review at that point.

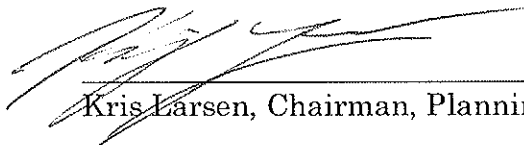
**8) Other Business**

There is no other business.

**9) Adjournment**

A motion to adjourn was made by Commissioner Cornell, seconded by Commissioner Williams, and unanimously approved at 9:08 p.m.

Approved by the Planning Commission,

  
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Kris Larsen, Chairman, Planning Commission

ATTEST:   
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Cynthia Bakke, Deputy Town Clerk